Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of	)	
Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-region, Interlata Services in California	)	WC Docket No. 02-306

OPPOSITION OF THE ASSOCIATION OF COMMUNICATIONS ENTERPRISES

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SUMMARY

The Association of Communications Enterprises ("ASCENT"), a national industry association representing nearly 350 entrepreneurial and smaller entities engaged in the provision of competitive local exchange, interexchange, wireless, and enhanced telecommunications services and their suppliers, hereby respectfully urges the Commission to deny the Application of SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. (collectively "Pacific Bell") for authority to provide interLATA interexchange telecommunications service within the Pacific Bell's in-region State of California.

As ASCENT will demonstrate herein, Pacific Bell has not fulfilled its statutory obligation to meet the entirety of the requirements for in-region interLATA market entry pursuant to section 271. Indeed, the California Public Utilities Commission ("California Commission"), following six years of evaluation and deliberation, has explicitly concluded that Pacific Bell has failed to meet two Competitive Checklist obligations. The California Commission has also determined under a separate, but related, proceeding, that the evidence reviewed by the California Commission does not support a determination that Pacific Bell "has manifested no anticompetitive behavior, has established no improper cross-subsidization, or poses no substantial possibility of harm to the competitive intrastate interexchange telecommunications markets." In no prior state endorsement of any regional Bell operating company's in-region, interLATA market entry, has such a State determination explicitly and clearly concluded an incumbent has failed to meet all Competitive Checklist obligations for in-region interLATA authority or the potential for anti-competitive behavior. Fulfillment of the

Competitive Checklist for incumbent interLATA market entry was never intended to be accomplished through compliance with a "substantial majority" of applicable requirements. Pacific Bell's interLATA market entry can be no exception. Pacific Bell's failure to demonstrate full and *present* compliance with all Checklist items renders its in-region interLATA market Application premature.

ASCENT will demonstrate further that the severity of Pacific Bell's failure to meet its resale obligations for Digital Subscriber Line ("DSL") services under Checklist Item 14, as determined by the California Commission is of such significance as to itself warrant rejection of the incumbent's Application as the facts in California's 271 investigation have revealed. The California Commission has concluded that, beyond "partial" compliance, Pacific Bell has been found in *clear non-compliance* with Checklist Item 14 with respect to its xDSL services resale. Moreover, the California Commission's emphatic conclusion that Pacific Bell has "erected unreasonable barriers to entry" in California's increasingly important DSL market and imposed restrictive conditions, contrary to section 251(c)(4)(A) and (B) of the 1996 Telecommunications Act, respectively, serve as an indictment on Pacific Bell's assertions regarding actual and present compliance with its California resale obligations.

Competitors' access to the incumbent's xDSL services will have a profound impact on the ability of the public to obtain competitive alternative for high-speed broadband services. The gravity of Pacific Bell's failure is significant and cannot be summarily resolved here through vague assurances of future compliance. Before any consideration is given to Pacific Bell's in-region interLATA market entry, Pacific Bell must provide probative evidence that the barriers and restrictions it has imposed on competitor access to wholesale xDSL services,

as determined by the California Commission, have been removed, and that competitors have unfettered access to wholesale xDSL services.

While Pacific Bell has admittedly begun the process of opening its California local markets to competition, it has not achieved full checklist compliance. As the Commission has recognized, a regional Bell operating companies failure to satisfy even "an individual item of the competitive checklist constitutes independent grounds for denying . . . [an] application." Pacific Bell's blatant failure to demonstrate present compliance with Checklist Item 14 and vigorous erection of competitive barriers for the resale of xDSL services, is cause for rejection of the incumbent's premature application.

The Application should also be denied for failure to meet the public interest standard of Section 271(d)(3)(C) of the Act. The Commission has recognized that this public interest standard is a precondition of interLATA entry separate from the Competitive Checklist. Apart from checklist compliance, PacBell's establishment of competitive barriers to entry and the California Commission's determination that interLATA entry would not comport with state requirements shows that grant of the Application would not serve the public interest and warrants a prompt denial of the application.

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for Provision of In-region, Interlata Services	)	
in California	)	
	)	

OPPOSITION OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises ("ASCENT"),[1] pursuant to Public Notice, DA 02-2333 (released September 20, 2002), hereby opposes the application ("Application") filed by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. (collectively "Pacific Bell") under Section 271(d) of the Communications Act of 1934 ("Communications Act"),[2] as amended by Section 151 of the Telecommunications Act of 1996 ("Telecommunications Act"),[3] for authority to provide interLATA service "originating" within Pacific Bell's "in-region State" of California.

I.

INTRODUCTION

On September 19, 2002, the California Public Utilities Commission ("California Commission") released its decision regarding Pacific Bell's compliance with the Competitive Checklist and separately with the incumbent's compliance with section 709.2 of California Public Utility Code governing incumbent intrastate interLATA market entry, following a

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[1] ASCENT is the international industry organization representing the interests of advanced communications firms. ASCENT's more than 300 companies and individual members provide a variety of voice and data services including Internet access, high-speed transport, local and long distance phone service, application services, and wireless products. Founded in 1992 and headquartered in Washington, D.C., ASCENT's mission is to open all communications markets to full and fair competition and to help member companies' design and implement successful business plans. ASCENT strives to assure that all service providers, particularly entrepreneurial firms, have the opportunity to compete in the communications arena and have access to critical business resources.

[2] 47 U.S.C. § 271(d).

[3] Pub. L. No. 104-104, 110 Stat. 56, § 151 (1996).

mammoth six year proceeding.[4] The *California Decision* concludes that Pacific Bell explicitly failed to meet Checklist Items 11, Number Portability, and 14, Resale.[5] Pacific Bell was further found to have failed to meet California's statutory obligations under State Code section 709.2, a four-part test regarding Pacific Bell's ability to engage in anti-competitive behavior.[6]

With respect to Pacific Bell's specific non-compliance with Checklist item 14, the California Commission agreed with ASCENT in emphatically concluding

> ... that Pacific [Bell] has *erected unreasonable barriers* to entry in California's Digital Subscriber Line market both by not complying with its resale obligation with respect to advanced services pursuant to §251(c)(4)(A) and by offering restrictive conditions in the SBC Advanced Solutions Inc. (ASI)-CLEC agreements in contravention of §251(c(4)(B).[7]

This indictment on Pacific Bell's present and full compliance with the Competitive Checklist presents no clearer basis for rejection of the incumbent's Application as premature.

For the first time, the Commission has been asked to consider an Application for in-region interLATA market entry where an Applicant has not only been expressly found to be in non-compliance with the entirety of the fourteen-point Competitive Checklist, but moreover, has

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[4] Decision Granting Pacific Bell Telephone Company's Renewed Motion for An Order That it Has Substantially Satisfied the Requirements of the 14-Point Checklist in §271 of the Telecommunications Act of 1996 and Denying That It Has Satisfied §709.2 of the Public Utilities Code, Public Utilities Commission of the State of California, Rulemakings (R.) 93-04-003 and R.95-04-043, and Investigations (I.) 93-04-002 and I.95-04-044 (released September 19, 2002) [the "California Decision"] at 3 (emphasis supplied).

[5] With respect to Digital Subscriber Line ("xDSL") services.

[6] California Decision at 239.

[7] California Decision at 3.

been found by state regulators to have erected competitive entry barriers, particularly with respect to the resale of advanced services. Such blatant non-compliance cannot be summarily resolved through simple assurances of future compliance or minor process improvements. Only through verifiable, factual evidence demonstrating that the impediments and restrictions Pacific Bell has imposed on advanced services resale have been eliminated, can Pacific Bell's serious compliance infirmity be remedied. In the absence of such evidence, any finding that Pacific Bell has otherwise fully met the conditions for interLATA market entry in its region, stands to set a dangerous precedent whereby "substantial compliance" and the established erection of competitive barriers is deemed "full compliance."

The California Commission's determination of present non-compliance with all Checklist items unequivocally demonstrates that Pacific Bell has not satisfied "the ultimate burden of proof that its Application satisfies all of the requirements of section 271." [8] The gravity of Pacific Bell's glaring recalcitrance and failure to make advanced services available to competitors at wholesale rates without restriction pursuant to section 251(c)(4) and section 271(c)(2)(B)(xiv) [9] underscores the fact that Pacific Bell has not "take[n] the steps required to

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[8] Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York (Memorandum Opinion and Order), CC Docket No. 99-295, FCC 99-404, ¶ 44 (released December 22, 1999) ("Bell Atlantic New York Section 271 Order").

[9] 47 U.S.C. §§251(c)(4)(A), 271(c(2)(B)(xiv).

open its local markets to full competition," and should not now "be rewarded with section 271 authority to enter the long distance market."[10]

II.

ARGUMENT

1. A Grant of Incumbent In-region InterLATA Operating Authority Is Predicated on a Finding That The Incumbent Has Fulfilled The Entirety of Its Statutory Obligations Under the Competitive Checklist

The Commission has recognized, "Section 271 . . . creates a critically important incentive for BOCs to cooperate in introducing competition in their historically monopolized local telecommunications markets."[11] "[I]ncumbent LECs have no economic incentive, *independent of the incentives set forth in sections 271 and 274 of the 1996 Act,* to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services."[12]

Whatever market-opening thresholds have not been reached when in-region, interLATA authority is granted likely will not be subsequently achieved once Section 271 incentives no longer remain. As the Commission has recognized, "[p]remature entry would

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[10] Bell Atlantic New York Section 271 Order. ¶ 15.

[11] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543, ¶ 14 (1997).

[12] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 55 (emphasis supplied).

reduce the BOCs' incentives to open their local markets, . . . with the obvious result . . . less local competition . . . [and] [t]he perhaps less obvious, but equally serious, result . . . less long distance competition."[13]

Congress, therefore, precluded approval of regional Bell operating company applications for in-region, interLATA authority unless and until the Commission finds, *inter alia*, that "the petitioning Bell operating company has . . . *fully* implemented the competitive checklist in subsection (c)(2)(B)."[14] As the Commission has correctly concluded, a regional Bell operating company's failure to satisfy even "an individual item of the competitive checklist constitutes *independent* grounds for denying . . . [an] application."[15] Moreover, as discussed elsewhere in these comments, Congress identified as an additional prerequisite for grant of a BOC application for in-region, interLATA authority a Commission determination that "the requested authorization is consistent with the public interest, convenience and necessity."[16] As the Commission has recognized, this latter criterion is "a separate, independent requirement for entry," which necessitates a careful examination of "a number of factors, including the nature

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[13] AT&T Corporation, *et al.*, v. Ameritech Corporation, 13 FCC Rcd. 21438, ¶ 7 (1998).

[14] 47 U.S.C. 271(d)(3)(A)(i) (emphasis supplied).

[15] Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order),13 FCC Rcd. 20599, ¶ 50 (1998) (emphasis supplied).

[16] 47 U.S.C. 271(d)(3)(B), (C).

and extent of competition in the applicant's local market, in order to determine whether that market is and will remain open to competition."[17]

In the case of Pacific Bell's California Application for interLATA market entry, the California Commission found that Pacific Bell has not demonstrated present compliance with two Checklist items; 11, governing Number Portability, and 14, governing resale with respect to xDSL services. Beyond non-compliance, however, in both instances the California Commission has specifically concluded that Pacific Bell's practices create barriers to competitive entry. Far from "partial" or "substantial" compliance with the Competitive Checklist, such competitive barriers reflect a premeditated failure to comply.

With respect to Checklist item 11, the California Commission stated that it, "... fully discussed Pacific's Checklist Item 11 ...[and] cannot find and/or verify that Pacific has satisfied the compliance requirements for Checklist Item 11 until [Pacific Bell] implements and verifies this essential element of local number portability in California.[18] The California Commission explicitly concluded that "[t]he continuing delay of this process [mechanization of Pacific Bell's number portability process] presents *a critical barrier* to entry for the CLECs."[19]

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[17] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543 at ¶ 402.

[18] California Decision at 200.

[19] Id. at 200 (emphasis supplied).

As discuss further *Infra*, the California Commission also deems Pacific Bell's failure to comply with Checklist Item 14 a competitive barrier, calling Pacific Bell's non-compliance, an "unreasonable barrier to entry in California's Digital Subscriber Line market." [20] The California Commission imposes an explicit requirement on Pacific bell to "remove the barriers to entry of the California DSL market and meet its resale obligation of advanced services" [21] before being found to have satisfied the requirements of Checklist Item 14.

Pacific Bell has failed to demonstrate that it is in full and present compliance with the Competitive Checklist, much less that its local market is and will remain open to competition. Pacific Bell's substantial compliance failures and the demonstrated barriers to competitive entry of two separate and distinct Competitive Checklist Items, based on an extensive six-year procedural case record before the California Commission, are sufficient cause for rejection of the incumbent's Application.

2. Pacific Bell's Failure to Make Retail xDSL-based Services Available For Resale At Wholesale Rates And Erection of Competitive Barriers, As Determined by the California Commission, Is In Direct and Significant Contravention of The Resale Component of the Competitive Checklist and Warrants Rejection.

Widespread demand for high-speed, broadband services and the significant potential for incumbents to dominate the advanced services segment of the market, underscore

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[20] California Decision at 3.

[21] Id. at 220.

the necessity to carefully consider *demonstrated* incumbent imposition of competitive barriers on advanced services availability to competitors. [22] The inability of Pacific Bell's competitors to gain non-discriminatory access to advanced services because of artificially imposed impediments and delays, *e.g.* competitive barriers, particularly if Pacific Bell is prematurely allowed to enter California's interLATA market, places the competitive industry at a clear disadvantage, contravening the Act's pro-competitive intent. That this should be allowed to occur, particularly in such a significant market as California,[23] would bode poorly for the future of meaningful local competition in California and elsewhere.

The *California Decision* regarding Pacific Bell's non-compliance with Checklist Item 14 is particularly significant in the Commission's determination of whether Pacific Bell should be granted in-region interLATA entry authority. The California Commission, drawing on the entirety of Pacific Bell's compliance in the record before it, unequivocally concludes that beyond Pacific Bell's non-compliance with Checklist Item 14, Pacific Bell maintains

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[22] According to a recent San Francisco Business Times article, "SBC Pacific Bell's past may have been delivering voice service over copper wire, but its future is data. 'We are going to grow data and focus on data,' said Chuck Smith, new president and chief executive of SBC Pacific Bell, who predicted 85 percent of the company's growth will come from data services. "Every application from frame relay to ATM to DSL to ISDN to everything in between." On the consumer side, SBC continues to aggressively push its DSL, or digital subscriber line, product. In late summer it unveiled its new co-branded service with Yahoo! throughout its 13-state territory. SBC hopes by targeting content for broadband users it will help drive demand for the service." SBC Pacific Bell's Chief Focusing on Data Service, San Francisco Business Times, Daniel S. Levine, October 4, 2002

[23] "California is the nation's most populous state. Representing the world's sixth largest economy, with a gross state product of $1.21 trillion, there is significant potential for the growth of advanced services here. Pacific [Bell's] DSL market dominance in California is increasing while its competitors' DSL market share is decreasing. California Decision at 220.

unreasonable competitive barriers to xDSL resale which must be eliminated before the incumbent may be found in compliance. According to the California Commission,

> ...Pacific [Bell] has *erected unreasonable barriers* to entry in California's Digital Subscriber Line market both by not complying with its resale obligation with respect to advanced services pursuant to §251(c)(4)(A) and by offering restrictive conditions in the SBC Advanced Solutions Inc. (ASI)-CLEC agreements in contravention of §251(c(4)(B).[24]

Two critical questions formed the underpinnings for the California Commission's findings:[25] 1) What services Pacific Bell is required to resell pursuant to §271(c)(2)(B) in light of recent Commission Orders granting regional Bell operating companies interLATA market entry authority and the *ASCENT Decision*[26] concerning advanced services resale, and 2) Whether Pacific Bell is reselling DSL services at wholesale rates pursuant to §251(c)(4)(A) without the imposition of discriminatory conditions pursuant to §271(c)(2)(B). Citing to the *ASCENT Decision's* findings that "an ILEC [may not be permitted to avoid §251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services," [27] the Commission's own established presumption of the unreasonableness of resale restrictions,[28] and

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[24] California Decision at 3 (emphasis supplied).

[25] Id at 216.

[26] Association of Communications Enterprises v. Federal Communications Commission, AT&T Corporation *et a.*., 235 F.3d. 662 (D.C. Cir. 2001) ("*ASCENT Decision*").

[27] *ASCENT Decision* at 668.

[28] California Decision at 209 citing to 47 C.F.R. §51.613.

the California Commission's analysis of applicable Commission regional Bell operating company interLATA market entry decisions concerning advanced services resale – both pre and post *ASCENT Decision* – the California Commission drew its unambiguous and factually supported response to both questions: Pacific Bell 1) is obligated to make advanced xDSL services available for resale; and 2) must remove barriers to DSL resale before being found compliant with Checklist Item 14.

Not surprisingly, Pacific Bell's Application vigorously maintains that it has complied with the entirety of its obligations under the Competitive Checklist. Giving scant mention to the California Commission's advanced services resale findings, Pacific Bell simply rehashes its California arguments, resting on the contention that it does not generally offer advanced services at retail and is therefore not legally obligated to make advanced services available for resale.[29] Pacific Bell's fall back position, is that the issue of advanced services resale falls outside the purview of Commission section 271 compliance investigations because any Pacific Bell obligation to make advanced services resale has "far reaching implications for a wide range of issues," as previously determined by Commission.[30] Yet the California

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[29] Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-region, Interlata Services in California, WC Docket No. 02-306, (September 20, 2002) at 81.

[30] Id. Citing to the Commission's Arkansas Missouri and Georgia/Louisiana 271 Orders. *See e.g.* Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri (Memorandum Opinion and Order), 16 FCC Rcd, at ¶ 82.

Commission has already established the evidentiary and legal basis for proving Pacific Bell wrong on both counts.

Of the obligation that Pacific Bell's advanced services be available for resale, the California Commission firmly concluded that

> The record, which *includes Pacific's statements and the marketing information from its web site*, demonstrate that [Pacific Bell Information Systems'] services are designed for, and sold to residential and business end users. The DSL Transport Services provided to PBIS by [Advanced Solutions, Inc.], are telecommunications services that enable PBIS to offer its services to end users. Without the DSL Transport Services provided to PBIS by ASI, PBIS could not reach its end-users. Under [the *ASCENT Decision*], an ILEC cannot set up a wholly owned affiliate that offers advanced services in order to avoid its resale obligations under §251(c)(4). Notwithstanding the *Second Report's* definition of "at retail," current law does not allow an ILEC to achieve with two affiliates what it cannot achieve with one. [31]

Pacific Bell's corporate shell game cannot obfuscate the fact that the incumbent today makes its advanced services available for resale to its affiliates and must, therefore, make those services available to competitors pursuant to its resale obligations under section 251(c)(4) and the *ASCENT Decision.* In that Pacific has failed to make retail advanced services available for resale, as the California Commission has determined, its non-compliance with Checklist Item 14 is clear.

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[31] California Decision at pp 219, 220 (emphasis supplied), citing to Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237 (1999).

Pacific Bell states that the Commission has declined to address the incumbent's advanced services resale within the context of the 271 proceeding, a reiteration of its California argument. What Pacific Bell fails to mention, but the California Commission squarely addresses, is the Commission's own conclusion in the Arkansas/Missouri 271 Applications that "neither the Act nor Commission precedent explicitly addresses the unique facts or legal issues raised in the case."[32] Here, the Commission is uniquely presented with an application where the facts of the case, as determined by the California Commission for California, establish that Pacific Bell's own provision of xDSL services to retail customers and efforts to bypass the findings of the *ASCENT Decision* through multiple affiliates, constitute both non-compliance and competitive entry barriers. Pacific Bell's cannot hide behind previous Commission 271 decisions in Arkansas/Missouri and Georgia/Louisiana through purported similarities when the facts in Pacific Bell's California case have led the California Commission to establish Pacific Bell's California resale obligations. The Commission has ample justification for the rejection of Pacific Bell's California Application as non-compliant with Checklist Item 14 with respect to xDSL service resale.

3. Pacific Bell Must Factually Demonstrate Full and Present Compliance With the Competitive Checklist Before Any Favorable Action May Be Taken With Respect To Its Application

[32] California Decision at 218.

The California Commission's findings that Pacific Bell's advanced xDSL services, and those offered by its affiliates, constitute services offered at retail which must be made available for resale pursuant to §251(c)(4) in order to satisfy the conditions of Competitive Checklist Item 14, causes Pacific Bell's Application to suffer from one last fatal infirmity. Because Pacific Bell has failed to comply with the entirety of its resale obligations with respect to advanced services because it does not make xDSL services available for resale, it cannot currently demonstrate actual present compliance with its resale obligations. In the absence of probative evidence that Pacific Bell has removed competitive entry barriers and makes xDSL services available for resale to competitors, Pacific Bell cannot establish present compliance.

The need for such probative evidence is crucial in demonstrating present compliance, particularly given Pacific Bell's tortured history of recalcitrant behavior in making advanced services available at resale, as the California record reveals. Simply stated, before Pacific Bell can be deemed to have fulfilled the entirety of its obligations with respect to resale, the incumbent must provide factual, statistical performance measures that confirm the timely and non-discriminatory provision of resold advanced services.

Supporting factual evidence of compliance has remained at the heart of regulatory determinations regarding regional Bell operating company compliance with the Act's prerequisites for in-region interLATA market entry. In the *Bell Atlantic New York Section 271 Order*, the Commission notes

> As we held in the *Second BellSouth Louisiana Order*, we first determine whether the BOC has made a *prima facie* case that it meets the requirements of a particular

> checklist item. The BOC must plead, with appropriate supporting evidence, facts which, if true, are sufficient to establish that the requirements of section 271 have been met.[33]

No such supporting evidence or facts have been provided by Pacific Bell with respect to advanced xDSL services resale because Pacific Bell has not made advanced xDSL services available for resale. The California Commission's determinations make clear that Pacific assumes xDSL resale obligations, now firmly established in California to be an integral part of the entirety of Pacific Bell's resale obligations under §251(c)(4) of the Act. Pacific must, therefore, now provide probative factual and statistical evidence of its non-discriminatory resale of xDSL services before compliance with Checklist Item 14 can be established

4. Grant of the Application Would Disserve the Public Interest

Section 271(d)(3)(C) of the Act provides that the Commission shall not give Section 271 authorization unless the requested authorization is consistent with the "public interest, convenience and necessity."[34] The legislative history of the 1996 Act shows that Congress intended that the Commission "in evaluating Section 271 applications . . . perform its traditionally broad public interest analysis of whether a proposed action or authorization would further the purposes of the Communications Act."[35] The Commission has recognized that under

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[33] Bell Atlantic New York Section 271 Order ¶ 49.

[34] 47 U.S.C. § 271(d)(3)(C).

[35] *In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298, ¶ 385 (1997) ("*Ameritech Michigan 271 Order*").

the standard it was given "broad discretion to identify and weigh all relevant factors in determining whether BOC entry into a particular in-region market is consistent with the public interest."[36] The Commission has affirmed that it will consider "whether approval of a Section 271 application will foster competition in all relevant telecommunications markets (including the relevant local exchange market), rather than just the in-region, interLATA market."[37] The Commission stated that it would not be satisfied that the public interest standard has been met unless there is an adequate factual record that the "BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition."[38] Further, according to the Department of Justice, interLATA entry by a Bell Operating Company ("BOC") should be permitted only when the local markets in a state have been "fully and irreversibly" opened to competition.[39]

Under this broad public interest standard, the instant Application could not present a clearer case for denial of the application.[40] The failure to meet the Competitive Checklist itself

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[36] *Ameritech Michigan 271 Order* at ¶ 383.

[37] *Id.* Congress rejected an amendment that would have stipulated that full implementation of the checklist satisfies the public interest criterion. *Ameritech Michigan 271 Order* at ¶ 389.

[38] *Ameritech Michigan 271 Order* at ¶ 386.

[39] *In the Matter of Application of Verizon Pennsylvania, Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania,* CC Docket No. 01-138, Evaluation of the United States Department of Justice at 2 (July 26, 2001); *see also, Ameritech Michigan 271 Order* at ¶ 382.

[40] Letter from Senators Conrad Burns, Ernest F. Hollings, Daniel K. Inouye, Ted Stevens to The Honorable Michael K. Powell, Chairman, Federal Communications Commission (April 17, 2001) ("*Senators'*

warrants a separate finding that grant of the Application would not serve the public interest. Further, the California Commission explicitly stated that "Pacific's less than complete progress has given California, technical, not actual, local telephone competition."[41] This, combined with Pacific Bell's establishment of barriers to competition, especially with respect to resale of advanced services, and the finding of the California Commission that Pacific Bell has not satisfied separate state standards for interLATA entry, shows that grant of the application would not serve the public interest. Accordingly, the Commission should deny the application for failure to meet the public interest standard of Section 271(d)(3)(C) of the Act.

III.

CONCLUSION

By reason of the foregoing, the Association of Communications Enterprises urges the Commission to deny the Application of SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. under Section 271(d) of the

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Letter"). That letter stated that "[t]he public interest requirements were added to Section 271 to ensure that long distance authority would not be granted to a Bell company unless the commission affirmatively finds it is in the public interest. Meaningful exercise of that authority is needed in light of the current precarious state of the competitive carriers which is largely due to their inability to obtain affordable, timely, and consistent access to the Bell networks. *Id* at 3.

[41] California Decision at 265.

Communications Act for authority to provide interLATA service originating within the Pacific Bell in-region State of California.

Respectfully submitted,

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